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File No. O. Spl. Cr. 05/42

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Legal DEPARTMENT

"A" BRANCH

p.5 (E)

Subject:—

S.C 4/46

Opinions under the Special Criminal Courts Ordinance; 1942 (II of 1942).

C O N T E N T S.

Le al Department file No. Spl. Cri. Courts/42.

S. No.	Compilation. No.	Subject.	Pages.
		Opinions under the ~~Assam~~ special Criminal Courts Ordinance, 1942 (II of 1942.)	
1.	G. I. No. 12400/10/12/42. J. No. 10050/10/12/42.	Sec. 6 (1) and (2) Appointment of D. J. as a special judge under procedure to be followed ~~in~~ by Spl. judge in respect of two trial of warrant cases by Magistrates. Amendment to the————	1-4
2)	J. No. 10103/22/10/43.	Clauses 5 and 10. No. Trial of the cases under the- ————	5 6

Mohan Rachandani.

7/6

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MB
31/5

R.L. NO. 12408
10-12-42.

Please see letter from the District & Sessions Judge, Bijapur, who has been appointed as a Special Judge under the Special Criminal Courts Ordinance, 1942,(II of 1942) at PP. 3-5 ante. Under sub sec. (1)of Sec.6 of the Ordinance a Special Judge has to follow the Procedure prescribed by the ~~Criminal~~ Criminal Procedure Code for the trial of warrant cases by Magistrates. The proviso to tht sub-sec.4 deals with the evidence of witnesses, and sub.sec. (2)provides that in matters not coming within the scope of sub.sec. (1), the Provision of the Cr.Pro.Code so far as they are not inconsistent with the Ordinance shall apply to the proceedings of a special Judge. The Special Judge says that in view of thse provisions he is at present following the detailed procedure laid down in sec. 364 of the Code for the recording of the examination of accused; and suggests that the Ck of I. should be moved to amend the Ordinance so as to dispense with the necessity of following sec. 364. He has suggested some verbal amendments to sub-sec.(1) of sec.6 and to the proviso thereunder. His contention is that the tenor of the Ordinance shows that trials before the Special Courts constituted thereunder are in substance summary and therefore it could not be the intention that a Special Judge should be required to follow the procedure prescribed by sec. 364. In this connection the Addl.sec. H.D.observes that recording of tatements of the accused in full is all the more necessary a. thethere is no appeal and a review is admissible only in a limited type of cases. The R.L.A. is requested to advise in the matter.

3. Under sec. 27 of the Ordinance the Provisions of the Cr. Pro.Code in so far as they may be applicable and in so far as they are not inconsistent with the Provisionsof the Ordinance shall apply to all matters connected with, arising from or consequent upon a trial by special Courts constituted thereunder. The proviso to sub-sec. 1) of sec.6 of the Ordinance deals with the evidence of witnesses; under sub-sec(2), in matters not coming within the scope of subjection (1), all the provisions of the Cr.Pro.Code shall, so far as they are not inconsistent with the Ordinance, be applicable to the recording of the statements of accused persons, Sub-Sec.(1)of Sec.6 of the Ordinance refers to the procedure prescribed by the Code for the trial of warrant cases by Magistrates. This procedure is laid down in

of the code. This does not however prohibit the the attraction of the provisions of sec.364 which are of a general nature and applicable in the case of all inquires and trials. (Sohoni's Cr.Pro.Code,P.713). The view expressed by special Judge that the Ordiance shows that all trials under it are in substance of a summary nature and therefore it could not have been intended that the statement of the accused should be recorded under sec. 364 does not appear to be correct. Where it was so intended, the first proviso to sec. 17 clearly permitted the summary Courts to record merely a memorandum of the evidence, as Sec.3 of the Ordinance provides for the constitution of three different kinds of Special Courts viz. Special Judges, Special Magistrates and Summary Courts. Different procedure is prescribed for these courts and there is also a distinction in their jurisdiction. E.g. while a Special Judge can by try such offences as are sent to him by the Prol.Govt. a special Magistrate can try only those offences which are not punishable with death. The jurisdiction of the Summary Coruts is also much restricted. Also an appeal lies against the decisions of a Special Magistrate or a Summary Court; but not against that of a Special Judge. The review prescribed by sec. 8 will only lie in the circumstances limited by clauses(a) and (b) of sec.8. It cannot thus be said that it was contemplated that sec. 364 should not be followed by Special Judges under sec.6. An amendment of the Ordinance on the lines indicated by the special Judge would be against its very scheme and there no objection to informing the Special Judge as suggested by Addl. sec. H.D.

Id/-
11-12-42.

S.S.
Id
11-12

A.S.

The special Criminal Courts Ordinance, 1942 does not provide for any appeals against the sentence passed by a Special Judge but under sec. 8 in certain cases the proceedings before a Special Judge have to be sumbitted for review by a High Court Judge nominated in that behalf by the Govt. In order to enable the High Court Judge to review the senetences passed by the spec- special Judge is would seem desirable that the High Court

that the High Court Juege should have before him full record of the examination of the accused persons. In view of this fact and the fact that only important cases are tried by the Special Judge, there is no case for the amendment of the Ordinance as suggested by the District and Sessions Judge, Bijapur.

Id/-
14-12

D.S. The papers may be "seen and Returned"

The R.L.A. agree with the view expressed by the Addl.Secy/ H.D.

~~H.D.~~

Id/-
14/12

Reply as at A-A
Sd/- P.N.M.
15/12

H.D.
5-5-56

U.R. to M.D. No 10089 dated 16-12-42.

c/4

Office of the P.L.A.

Under clauses 5 and 10 of Ordinance No.11 of 1942 Government may sanction the trial of either offences or cases. In the two orders attached it is the cases that Government has sanctioned. The description of the cases in the order mentions the offences involved. Such mentions is not strictly necessary and would, it seems, not prevent the Judge or Magistrate from trying other offe offences involved. But there is no objection to mentioning the offences or to adding an omnibus clause as suggested by Additional Secretary, H.D. If Government were to sanction the trial of the offences, then this reference would raise rather complicated questions. But it seems unnecessary to deal with them since Government seems to have adopted the more convenient methods of sanctioning the trial of cases.

Sd/-P.N.N.
22-12

Remembrancer of Legal Affairs.

M.R.D.
5-5-56
O/4

U.R. to H.O., No.19193 dated 22nd December 1942.